IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5062 OF 1990

Smt. Chimabai Ganpatrao Shitole
deceased, through heir Smt.
Shantabai Sayajirao Gaikwad ... Petitioner

versus

1. Bajirao Annasaheb Shitole,
2. Sampat Martand Shitole ... Respondents

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Mr. Avinash Thakane i/by Mr. P.B. Shah, for the Petitioner.
Mr. Rajesh Behere, for Respondent No. 1.
Mr. Suresh Bhosale, for Respondent No. 2.

...

CORAM : A.M.KHANWILKAR,J.

5th August 2004

ORAL JUDGMENT :

1. This petition takes exception to the judgment and order passed by the Maharashtra

Revenue Tribunal, Pune, dated December 19, 1989, in Revision No.MRT/P/II/9/87(TNC B 344/87). The land in question is agricultural land bearing Survey No. 5/4 of village Dahitane, taluka Daund, district Pune. The predecessor of the Petitioner herein was the owner and the predecessor of the Respondents herein was the tenant in the suit land. As the predecessor of the Respondents was in lawful cultivation of the suit land on the tillers' day, proceedings under section 32G of the Act were initiated. The authority, however, disposed of those proceedings by order dated May 29, 1960 by recording that the tenant remained absent, for which reason the purchase had become ineffective. Consequent to the said decision, the landlords initiated proceedings under section 32P of the Act for restoring possession of the suit land. As action for restoration commenced, the tenant rushed to the Sub-Divisional Officer and filed appeal being Tenancy Appeal No. 20/1982, questioning the order passed by the tenancy authority under section 32G as well as 32P of the Act. The appellate authority by order dated May 31, 1984, was pleased to allow the appeal preferred by the

tenant and set aside both the orders passed by the tenancy authority under section 32G and 32P of the Act. The appellate authority found that the order under section 32G declaring the purchase to have become ineffective was passed without affording any opportunity to the tenant, for which reason the same came to be set aside. The appellate authority accordingly remanded the matter for fresh enquiry before the tenancy authority. After remand, the parties appeared before the tenancy authority. The Additional Tahsildar and A.L.T., Daund, by order dated September 3, 1985, once again declared the purchase as ineffective. The authority proceeded to record that conclusion on some specious reasoning that there is no justification why the tenant had filed appeal only in respect of the suit land, referred to above, though he claimed to be tenant in respect of six other lands. That reason cannot be the basis for adjudicating the rights and liabilities between the parties inter se. The tenancy authority once again emphasised on the record, which indicated that the tenant had failed to appear before the authority in the year 1960. This reason once again overlooks the

fact that the appellate authority had set aside the decision passed on the earlier occasion under section 32G as well as section 32P of the Act and remanded the matter for fresh enquiry. Interestingly, the tenancy authority has not adverted to any record to suggest that the tenant was ineligible to purchase the suit land though has become owner thereof by operation of law. On such erroneous basis, the tenancy authority by order dated 3rd September 1985 decided the proceedings against the tenant. Against that decision, the tenant carried the matter in appeal before the Sub-Divisional Officer being Appeal No. 39 of 1985. The appellate authority after considering the materials on record has found that the tenancy authority has clearly glossed over the fact that the matter was remanded by the appellate authority by setting aside the decisions passed in earlier proceedings and the fact situation which obtained at that time once again could not have been made the basis for non-suiting the tenant. The appellate authority has found that the tenancy authority has not undertaken fresh enquiry as was required to be done on account of the remand order passed by the

appellate authority on May 31, 1984. On that reasoning, the appeal preferred by the tenant came to be allowed and the matter was once again remanded to the tenancy authority for conducting fresh enquiry in view of the observations made in the said judgment. That decision came to be questioned by the landlords before the Maharashtra Revenue Tribunal. The Tribunal has affirmed the approach and the reasons recorded by the appellate authority and, therefore, proceeded to dismiss the revision application preferred by the landlords being devoid of merits. This decision is the subject matter of challenge before this Court.

2. The learned Counsel for the Petitioner submits that there was no reason for the appellate authority to once again remand the matter for fresh enquiry because fresh enquiry was already conducted and the tenancy authority has come to the conclusion that the purchase in favour of the tenant has become ineffective. He has supported the reasons recorded in that behalf by the tenancy authority.

3. Having considered the rival submissions, to my mind, this petition is devoid of merits. As has been rightly found by the appellate authority, the tenancy authority was obliged to undertake fresh enquiry on its own merits in accordance with law. However, in the present case, after the first remand order, the tenancy authority has proceeded on some extraneous consideration. It has noted that the tenant has filed appeal only in respect of one of the land, out of six lands held by him. That cannot be the basis to non-suit the tenant in respect of the suit land, in respect of which he has shown willing to purchase and was wanting to exercise his right to purchase the same. Even the other reason recorded by the tenancy authority that the tenant remained absent during the first enquiry cannot be the basis for holding that the purchase has become ineffective. This is so because the appellate Court has already set aside the order passed by the tenancy authority dated 29th May 1960. The position as prevailed then could not have been taken into account for deciding the present enquiry, which was required to be undertaken afresh in view of the remand order

passed by the appellate authority dated May 31, 1984. Viewed in this perspective, the revisional authority has rightly affirmed the order of the appellate authority setting aside the decision of the tenancy authority and once again remanded the matter for fresh enquiry in accordance with law.

4. Accordingly, there is no merit in this petition. The same is dismissed. Rule discharged. No order as to costs.

5. Parties to act on the authenticated copy of this Judgment.

(A.M.KHANWILKAR,J.)